

RESTRUCTURING & INSOLVENCY

NEW INSOLVENCY REGIME
IN ANGOLA

May 2021



The new Law on the Legal Framework for Corporate Restructuring and Insolvency, which was unanimously approved by Parliament on 19 January 2021, has now been published as Law no. 13/21 of 10 May, having entered into force on that same day.

A long-awaited regime.

The bankruptcy legal regime in force in Angola has long been in need of a thorough review by the legislature. Comprised in the 1961 Code of Civil Procedure (without ever having been revised or updated in this area to date), the regime presented itself as outdated and unsuited to modern economic reality, and hence, was simply not resorted to in practice.

Therefore, the new Law on the Legal Framework for Corporate Restructuring and Insolvency, unanimously approved by Parliament on 19 January 2021, which has now been published as Law no. 13/21 of 10 May ("Law 13/21") and entered into force on that same day, was eagerly awaited.

Besides representing a historical milestone for the protection of creditors of national companies and the promotion of investment in the country, this new diploma constitutes a relevant challenge for those practitioners entrusted with putting the regime in practice.

Subject matter and scope of application of Law 13/21

The purpose of Law 13/21 is to regulate (i) the legal regime of extrajudicial and judicial recovery of natural and legal persons in economic distress or "imminent insolvency", provided that the recovery is viable and (ii) the legal regime of insolvency proceedings of natural and legal persons.

The regime set out in Law 13/21 applies to commercial companies, civil companies of commercial form, subsidiaries, associations and foundations, civil companies, cooperatives, commercial companies and civil companies of commercial form until the date of definitive registration of the contract by which they are constituted, to inheritances in abeyance and also to natural persons.

Recovery Paradigm

The Law aims to make it possible to overcome the difficult economic situation of the entities covered by the new regime, in order to allow the satisfaction of creditors' interests, the maintenance of employment, the preservation of economic activity and its social function.

When the recovery of such entities is not possible, the Law aims to efficiently promote the liquidation of their assets and the distribution of the relevant proceeds to its creditors.

Out-of-court Reorganization

The Out-of-court Reorganization procedure aims to allow a debtor in a difficult economic situation – a situation in which a debtor faces serious difficulties in fulfilling its obligations punctually, namely due to lack of liquidity or because it cannot obtain credit – to draw up a plan with its creditors for its recovery.

Debtors whose financial difficulties are surmountable and whose activity can, with strong probability, be maintained after the conclusion of the agreement may resort to out-of-court reorganization.

The procedure is initiated by written communication signed by the debtor or by creditors representing 10% of the debtors' non-subordinated liabilities. During the negotiation period, which should not exceed 6 months, creditors must refrain from bringing new actions against the debtor and must suspend pending actions.

The out-of-court reorganization plan approved by creditors representing at least 3/5 of the claims of each class of claims covered by the plan is, as a rule, subject to court sanctioning and, once sanctioned, is binding on all creditors of the classes of claims covered by the plan, regardless of their adherence thereto.

Judicial Reorganization

Judicial Reorganization aims at making it possible to overcome the difficult economic situation in which the debtor finds itself, by preparing a Judicial Reorganization Plan.

Debtors may resort to Judicial Reorganization if they (a) are in a difficult economic situation; (b) have regularly exercised their activity for over a year; (c) have not been declared insolvent or been granted Judicial Reorganization in the last 2 years, and also (d) whose directors or controlling shareholder have not been convicted for certain crimes.

The process is initiated by an initial petition addressed to the court, presented by the debtor himself or by his surviving spouse or equivalent, by his heirs, by the estate in abeyance, by the executor, the surviving shareholder or creditors representing at least 10% of the non-subordinated claims.

The reorganization plan must be submitted to the court within 45 days after the order admitting the application for Judicial Reorganization and may subsequently be challenged by the creditors.

Once judicial reorganization has been granted by the competent judge, the judicial reorganization plan binds the debtor and all creditors subject thereto. The debtor remains under judicial reorganization until all obligations provided for in the plan that fall due up to two years after granting of judicial reorganization have been performed.

During those two years, substantial non-fulfilment of the obligations provided for in the plan or the inability to implement it will result in conversion of the reorganization into insolvency.

The Insolvency Process

The Insolvency procedure is defined in Law 13/21 as an urgent judicial procedure of universal execution whose purpose is the liquidation of the assets of the insolvent debtor and the distribution of the proceeds among the creditors or the satisfaction of the creditors in accordance with an insolvency plan.

The concept of insolvency is defined as a situation in which it is impossible for a debtor to meet its due obligations on account of lack of means. When the debtor is a corporate entity or an autonomous estate for whose debts no individual is personally and unlimitedly liable, either directly or indirectly, it will also be - considered insolvent when its liabilities are manifestly greater than its assets, evaluated according to the applicable accounting standards.

A debtor in a difficult economic situation, which does not meet the requirements to apply for Judicial Reorganization, shall apply to the Court for Insolvency.

The proceedings are initiated by a written petition filed by the debtor itself or (i) the debtor's surviving spouse or equivalent, any heir of the debtor or the head of the couple; (ii) a partner or shareholder of the debtor, in accordance with the law or the memorandum of association of the company; (iii) the Public Prosecutor's Office, where the public interest is involved or the protection of which is within its competence; (iv) any person who is legally liable for the debtor's debts or (v) any creditor.

A debtor is declared insolvent when:

- a) It fails to comply with one or more obligations that, due to their amount or the circumstances of the non-compliance, reveals the debtor's incapacity to satisfy the generality of its obligations punctually;
- b) It generally suspends payment of its matured obligations;
- c) It is the subject of enforcement proceedings for a liquid amount and does not pay it, does not deposit it or appoints enough assets for seizure within the legal deadline;
- d) It carries out any of the acts listed in the law, except if these acts are measures foreseen in the Judicial Reorganization Plan;
- e) It fails to comply, within the established term, with an obligation assumed under the Judicial Reorganization Plan;
- f) It has, in the last six months, been in general breach of tax obligations and social security contributions, credits arising from employment contracts, or the breach or termination of such contracts and rents of any type of lease;
- g) It dissipates, abandons, creates fictitious credits, hastily liquidates its assets or resorts to ruinous or fraudulent means to make payments.

In the decision declaring the insolvency, the Judge, among other aspects:

- a) Appoints an Insolvency Administrator ("IA") who will be chosen from among those on an official list;
- b) Sets a time limit of up to 30 days for creditors to make claims;
- c) It determines that the administration of the insolvent estate will be ensured by the debtor, whenever there are reasons to do so and the Assembly of Creditors so requests;
- d) Orders the seizure, for immediate delivery to the IA, of the debtor's accounts and all his assets, even if they are seized, pledged or otherwise seized or retained.



Contacts



ANGOLA@VDALEGALPARTNERS.COM

This is a limited distribution and should not be considered to constitute any kind of advertising. The reproduction or circulation thereof is prohibited. All information contained herein and all opinions expressed are of a general nature and are not intended to substitute recourse to expert legal advice for the resolution of real cases. VdA Legal Partners is an international legal network developed by Vieira de Almeida comprising attorneys admitted in all the jurisdictions covered in accordance with the legal and statutory provisions applicable in each jurisdiction. ASP Advogados is the exclusive member of VdA Legal Partners in Angola.